

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CYCLONE CATTLE, L.L.C.**  
Facility #60582

**Pottawattamie County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2011-AFO- 11

TO: John C. Rasmussen, Registered Agent  
Cyclone Cattle, L.L.C.  
233 Pearl Street  
P.O. Box 1078  
Council Bluffs, Iowa 51503

Russ and Diane Keast, dba Keast Enterprise  
45565 Aspen Road  
Henderson, Iowa 51541-6213

Jim Dunbar  
36488 Beechnut Road  
Carson, Iowa 51525

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cyclone Cattle, L.L.C. (Cyclone Cattle) for the purpose of resolving environmental violations at its open feedlot located at 36488 Beechnut Road, Carson, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Dan Stipe, Field Office 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Cyclone Cattle is an open feedlot located at 36488 Beechnut Road, Carson, Iowa (SW 1/2 of Section 18, Macedonia Township, Pottawattamie County). The feedlot has a maximum animal capacity of 3,500 head of beef cattle with a drainage area of 40 acres. In July 2009, the feedlot was issued a National Pollutant Discharge Elimination System (NPDES) permit.

2. On March 11, 2010, Jim Dunbar, representative for Cyclone Cattle, contracted DNR Field Office 4 and stated that the facility's retention basins were close to overflowing because of the snowmelt and the precipitation. Dan Olson and Alison Manz, DNR Field Office 4 personnel, visited the facility. Mr. Dunbar informed the field office that the pump associated with the center pivot was broken during the fall of 2009, so very little liquid had been pumped out of the retention basin. The field office staff noted that center pivot had recently been operated. They observed liquid pooled up in the grass filter strip. The field office staff collected a sample of the liquid flowing into the grass filter strip. The laboratory results indicated the following: an E.coli concentration of 70,000/100mL, a total kjeldahl nitrogen concentration of 25 mg/L, a membrane fecal coliform concentration of 70,000/100 mL, a total suspended solids concentration of 150 mg/L, an ammonia as nitrogen concentration of 10 mg/L, and a total biological oxygen demand concentration of 120 mg/L. The sample results indicated a potential for a water quality violation if the liquid were to flow into a water of the state.

3. On March 13, 2010, Mr. Dunbar contacted the DNR Emergency spill hotline and informed the DNR that the east lagoon at Cyclone Cattle was overflowing. He stated the facility intended to turn on a pump to the center pivot to relieve some of the pressure on the lagoon. Dan Stipe, DNR Field Office 4 supervisor, responded to the call. Mr. Stipe contacted Mr. Dunbar who stated that the lagoon had started to overflow at 9:00 am on the morning of March 13 and that the facility was pumping to the irrigation system to relieve the pressure on the east lagoon. Mr. Stipe then proceeded to the facility where he met with Joe Horning, Cyclone Cattle employee. Mr. Stipe observed manure runoff from the open feedlot to the culvert east of the facility where the culvert runs diagonally beneath County Road M-16. The culvert is at the base of the feedlot's grassy waterway and is the headwater of an unnamed tributary. The water was extremely turbid, very foamy,

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and smelled of manure. Mr. Stipe collected samples of the water from the east side of County Road M-16. The laboratory results indicated the following: an E.coli concentration of 39,000/100mL, a total suspended solids concentration of 190 mg/L, an ammonia as nitrogen concentration of 45 mg/L, and a total biological oxygen demand concentration of 310 mg/L. Mr. Stipe followed the impacted tributary downstream to the point where the tributary joined the West Nishnabotna River. Mr. Stipe did not observe a fish kill in the tributary, but did observe foam in the impacted area.

4. On May 12, 2010, Cyclone Cattle submitted its drawdown and land application records, per the field office's request. DNR Field Office 4 reviewed the records and determined that Cyclone Cattle had not land applied manure in accordance with its NPDES permit. The permit stated that Cyclone Cattle may remove manure and land apply it at any time of the year, but that Cyclone Cattle must land apply the open feedlot effluent during April, July, and October to reduce the volume of open feedlot effluent remaining in the control system during these months to less than 10 percent of the system's designed open feedlot effluent storage volume. The records indicated that no application occurred between September 10, 2009 and March 9, 2010. The required October drawdown had not occurred.

5. On August 23, 2010, DNR Field Office 4 issued a Notice of Violation letter for the water quality violations discovered by Mr. Stipe in March 2010 as well as the NPDES permit violations. The letter explained that the violations were being referred for further action.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. The laboratory sample results and the visual observations made by DNR Field Office 4 during the March 2010 investigation confirm that cattle manure from Cyclone Cattle was not adequately treated prior to being discharged to a water of the state. The above mentioned facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock

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watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants in the tributary. The elevated levels would be considered acutely toxic to aquatic life. Additionally, the discharge of manure from Cyclone Cattle to the tributary created objectionable color and odor and created foam. The above mentioned facts indicate violations of the general water quality criteria.

4. NPDES Permit No. 78-00-0-20 was issued to Cyclone Cattle in July 2009 and Section 1 (A)(1)(a) allows for a manure discharge to a water of the state during a precipitation event if the manure control system is designed, constructed, operated and maintained to contain all manure including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event (5.6 inches). The Cyclone Cattle facility was not operated and maintained in a manner to contain all the manure including the runoff and the direct precipitation as witnessed by DNR Field Office 4. The above mentioned facts indicate a violation of the NPDES permit as the discharge was an unpermitted discharge.

5. NPDES Permit No. 78-00-0-20, Section 1(A)(1)(b) states that the installed system for the Settled Open Feedlot Basin is the system that was designed and approved by the facility's licensed engineer and approved by the DNR. The proposed system for this operation is "System 3" with a design effluent storage volume of 9,226,000 gallons (5,264,000 gallons for the west basin and 3,962,000 gallons for the east basin). The System 3 design requires that sufficient open feedlot effluent must be land applied during April, July, and October to reduce the volume of open feedlot effluent remaining in the control system during these months to less than 10 percent of the system's design storage volume. The records indicated that no application occurred between September 10, 2009 and March 9, 2010. The required October drawdown had not occurred. The above mentioned facts indicate a violation of the NPDES permit.

**V. ORDER**

THEREFORE, the DNR orders and Cyclone Cattle agree to do the following:

1. Cyclone Cattle shall operate and maintain its facility in accordance with the facility's NPDES permit at all times;
2. Cyclone Cattle shall turn off the center pivot when crossing the grassed waterway;
3. Cyclone Cattle shall maintain the solids settling basin in accordance with Section I of the Special Conditions of NPDES Permit No. 78-00-0-20;
4. Cyclone Cattle shall pay a penalty of \$3,500.00. \$1,500.00 of the penalty shall be paid to the DNR within 30 days of the date the Director signs this

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administrative consent order. In lieu of payment of the remaining \$2,000.00, Cyclone Cattle shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Pottawattamie County Conservation Board. Cyclone Cattle shall make a payment of \$2,000.00 to the Pottawattamie County Conservation Board within 30 days of the date the Director signs this administrative consent order. Once the payment is made, Cyclone Cattle shall submit a receipt of payment to Kelli Book, attorney for the DNR.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,500.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Cyclone Cattle avoided the costs of properly operating the manure control system which resulted in an economic benefit for the facility. It is estimated that Cyclone Cattle’s avoided costs are at least \$1,000.00 and therefore, \$1,000.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 4 documented a manure discharge to a water of the state. By failing to properly operate the manure controls and by allowing manure to discharge to a water of the state, Cyclone Cattle endangered the water quality of the

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nearby tributary. Failure to comply with the water quality regulations and the NPDES permit threatens the integrity of the regulatory system. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Cyclone Cattle has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The manure release was a result of improper operation of manure control structures and demonstrates a lack of consideration for the environment. Therefore, \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

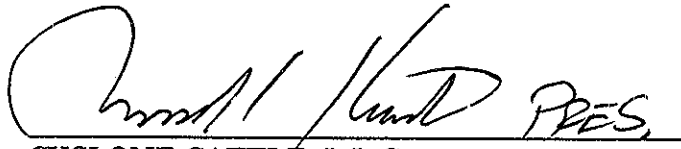
This administrative consent order is entered into knowingly and with the consent of Cyclone Cattle. For that reason Cyclone Cattle waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 29<sup>th</sup> day of  
April, 2011.

  
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CYCLONE CATTLE, L.L.C.

Dated this 21 day of  
APRIL, 2011.

Facility #60582; Kelli Book, Field Office 4, EPA, VIII.D.1.b and I.B.2